IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2295 of 2007
To
FIRST APPEAL No. 2311 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL. LAND ACQ. OFFICER & 1 - Appellants
Versus
BHAILAL DIPUBHAI -Respondents

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Appearance :
MR SUNIT S SHAH, GOVERNMENT PLEADER, for the appellants in First Appeal Nos. 2295 to 2302 of 2007. MR JASWANT K.SHAH, A.G.P. for appellants in First Appeal Nos. 2303 to 2311 of 2007.
MR GM AMIN for the respondent-claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 07/05/2007

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.G.M.Amin, learned Counsel, waives service of notice on behalf of the claimant/s in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ["the Act" for short] read with Section 96 of the Code of Civil Procedure, 1908 is the legality of common judgment and award dated March 31, 2006, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos. 343 to 359 of 2002, by which the claimants have been awarded additional amount of compensation at the rate of Rs. 27.40 Ps. per sq.mt., for their acquired lands, over and above the compensation offered to them at the rate of Rs. 2.40 Ps. per sq.mt. by the Special Land Acquisition Officer vide award dated December 22, 2000.

2. The Executive Engineer, Narmada Yojna,

Division No.8, Dholka proposed to the State Government to acquire lands of village Rupgadh, Taluka : Dholka, District : Ahmedabad for the public purpose of construction of a canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Rupgadh specified therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on August 28, 1998. Thereafter necessary inquiry as contemplated by Section 5A of the Act was conducted. On completion of inquiry, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the said report, the State Government was satisfied that the lands of village Rupgadh, which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of a canal under Narmada Project. Therefore, a declaration under Section 6 of the

Act was made, which was published in the Official Gazette on March 16, 1999. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated December 22, 2000 offered compensation to the claimants at the rate of Rs. 2.40 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (R) at Navrangpura, where they were numbered as Land Acquisition Case Nos.343 to 359 of 2002.

3. On behalf of the claimants, witness Ranjitbhai Ravjibhai Parmar was examined at Exh.27 in support of their claim for enhanced compensation. The witness stated that the lands acquired were highly fertile and that as they were irrigated and even, each claimant was able to raise crops of cotton, cumin-seeds, juvar, til, paddy, wheat etc. The witness mentioned that each claimant was able to earn net profit of Rs. 40,000/- per Bigha per year from the sale of agricultural produces. In order to support his claim that the lands acquired were highly fertile, the witness produced 7/12 Extracts relating to the lands acquired at Exhs.14 to 19. The witness stated that boundaries of his village Rupgadh were touching the boundaries of village Koth and that Narmada canal was coming from village Koth to the sim of his village. The witness further explained that the survey numbers of village Koth and the survey numbers acquired in the instant case for the purpose of construction of a canal under the Narmada Project

were adjoining each other. The witness mentioned that for the purpose of construction of canal under Narmada Project, lands of village Koth were acquired, for which the Reference Court had awarded compensation at the rate of Rs.29.80 ps. per sq.mt. and, therefore, the claimants were entitled to enhanced compensation on the basis of the said previous award. The witness produced previous award of the Reference Court relating to the lands of village Koth at Exh.24. The witness further asserted that the lands of village Koth, which were acquired earlier for the public purpose of construction of a canal under Narmada Project were similar in all respects to the lands acquired in the instant case including fertility and that similar crops were being raised on the lands of both the villages. The witness stated that a Tar-road was available for the purpose of approaching village Koth from his village and that village Koth was situated at a distance of 1-1/2 KM away from his village.

This witness was cross-examined by the learned Counsel for the acquiring authorities. However, nothing substantial could be elicited nor the assertion made by the witness that the lands which were acquired previously from village Koth were similar in all respects to the lands acquired in the instant case could be demonstrated to be untrue.

4. It may be stated that on behalf of the acquiring authorities, no witness was examined at all. On appreciation of evidence adduced by the parties, the Reference Court concluded that the lands acquired in the instant cases were irrigated lands. The Reference Court further deduced that previous award of the Reference Court relating to the lands of village Koth was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant cases. Placing reliance on the said previous award, the Reference Court has awarded additional amount of compensation to

the claimants at the rate of Rs.27.40 ps.per sq.mt. by the impugned award, giving rise to the above-numbered appeals.

5. This Court has heard Mr.Jaswant K.Shah, learned Assistant Government Pleader for the appellants, and Mr.G.M.Amin, learned Counsel for the claimant/s in each appeal, at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants, which includes oral as well as documentary evidence adduced by the claimants before the Reference Court. It is true that the witness for the claimants could not make good his assertion that each claimant was earning RS.40,000/- per Bigha per year from the sale of agricultural produces. However, the said fact is of no importance, inasmuch as the claimants never claimed enhanced compensation on yield basis, nor enhanced compensation was claimed by the claimants on the basis of comparable sale instances. What was relied upon by the claimants

was previous award of the Reference Court relating to the lands of village Koth, which was produced at Exh.24. Exh.24 indicates that the lands of village Koth were acquired for the public purpose of construction of a canal under Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on April 23, 1998. Therein, the Special Land Acquisition Officer by his award dated June 14, 1999 had offered compensation to the claimants at the rate of Rs.1.90 ps. per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (R) at Navrangpura, where they were numbered as Land Acquisition Case Nos.159 to 171 of 2001. In those cases, on behalf of the claimants, witness Lalubhai Jasmatsang was examined at Exh.31, whereas no witness was examined on behalf of the acquiring authorities. Therein, the claimants had relied upon the previous award of the Reference Court relating to the lands of village Koth rendered in Land

Acquisition Case Nos.26 of 1987, which was produced at Exh.29, in support of their claim for enhanced compensation. On appreciation of evidence adduced by the claimants, the Reference Court awarded additional amount of compensation to the claimants at the rate of Rs.27.90 ps. per sq.mt. by judgment and award dated December 10, 2003. During the course of hearing of the appeals, the learned Counsel for the claimants has produced simple copy of judgment dated November 7, 2006 rendered by the Division Bench in First Appeal No.3341 to 3353 of 2006, for perusal of the Court. It indicates that the judgment and award dated December 10, 2003 rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.159 to 171 of 2001 was challenged before the High Court in the above-numbered appeals and the appeals were dismissed by judgment dated November 7, 2006. It is well settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be

relied upon as a good piece of evidence for the purpose of determining market value of similar lands acquired subsequently from the adjoining village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Koth for the purpose of determining market value of the lands acquired in the instant cases. The contention that in the instant cases, lands acquired were not irrigated lands; whereas the lands which were subject matter of the previous award of the Reference Court relating to the lands of village Koth, were irrigated lands and, therefore, the impugned award should be suitably modified, has no substance. It may be mentioned that the witness for the claimants had produced necessary documents at Exhs.16 to 20 to indicate that the lands acquired were irrigated lands. This evidence was not challenged by the acquiring authorities at all. Further, Exh.35 is Schedule `A' attached to the award of the Special Land

Acquisition Officer in Case No.16 of 1998. It indicates that the acquired lands were irrigated lands. Therefore, the plea that the lands acquired in the instant cases were not irrigated lands and, therefore, the previous award of the Reference Court relating to the lands of village Koth could not have been relied upon, has no substance and is hereby rejected. On reappreciation of evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been arrived at by the Reference Court on appreciation of evidence adduced before it, to which well-settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one which is taken by the Reference Court on appreciation of evidence adduced before it. Therefore, the appeals, which have no merits, are liable to be dismissed.

For the foregoing reasons, all the appeals fail and are hereby dismissed. There shall be no orders as to costs.

The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)